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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,850	08/18/2003	Cynthia H. Nordness	KCC-15,611.1	4040

7590 09/26/2006

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/642,850

Applicant(s)

NORDNESS ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3 July 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to Mizutani have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the mesh liner being co-extensive with the composite structure, and unattached to the composite structure along the entire structure) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The instant claims disclose the mesh liner is continuous, but does not require the liner to be a single sheet of material or to be coextensive with the composite structure. Mizutani discloses a liner that is continuous along the entire length of the article, and therefore fulfills the claimed limitations.

Further, the instant claims disclose the mesh liner is unattached to the composite structure in a central region. The claim does not define the physical limitations of the central region. Mizutani discloses a liner that is attached along various points, and unattached between the points. Therefore, in the area immediate to the center of the diaper (i.e. the central region), the liner is unattached to the composite structure, and Mizutani fulfills the limitations as claimed.

Applicant's arguments with respect to Roe have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-12, 20-23, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Mizutani et al. (US 2002/0028624 A1).

Mizutani discloses an absorbent garment, as shown in figure 1, comprising a composite structure having end and side edges, a perimeter, and a central region. The composite structure includes a liquid-permeable body side liner 11, an outer cover 7, an absorbent assembly 8, and a mesh liner 12, as shown in figure 2.

With respect to claim 2, the mesh liner comprises a nonwoven material, as disclosed in paragraph [0070].

With respect to claims 3 and 4, the mesh liner comprises a nonwoven material comprising polypropylene and polyethylene, as disclosed in paragraphs [0070-0071].

With respect to claim 5, the nonwoven material is a spunbond/meltblown/spunbond web, as disclosed in paragraph [0070].

With respect to claim 7, the SMS web comprises at least two layers of material.

With respect to claim 8, the mesh liner 12 is attached to the composite around its perimeter, and is unattached in a central region of the composite, as shown in figure 2.

With respect to claim 9, the mesh liner 12 is liquid permeable but not porous enough to allow bowel material.

With respect to claims 10-12, the mesh liner 12 has a basis weight in a range from 15-40 gsm.

With respect to claim 20, the mesh liner 12 comprises part of the topsheet 10, which is attached to containment flaps 5, as shown in figure 1 and disclosed in paragraphs [0031] and [0034].

With respect to claim 21, the mesh liner 12 is attached to the composite around its perimeter, and is unattached in a central region of the composite, as shown in figure 2.

With respect to claim 22, the mesh liner 12 is liquid permeable but not porous enough to allow bowel material.

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With respect to claim 23, the mesh liner 12 has a basis weight in a range from 15-40 gsm.

With respect to claim 26, the mesh liner 26 is folded into pleats, as shown in figure 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 13-17, 24-25, and 27-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 2002/0028624 A1).

With respect to claim 6, Mitzutani discloses all aspects of the claimed invention with the exception of the mesh liner being nylon. Mitzutani discloses in paragraph [0073] that the mesh liner may comprise rayon or other synthetic fibers. Rayon and nylon are both well known in the art for use as liners, and it would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the liner of Mitzutani with nylon instead of rayon, since the two fabrics are functionally equivalent in this situation, and the invention would perform equally well with either rayon or nylon.

With respect to claims 13 and 24, Mitzutani discloses all aspects of the claimed invention with the exception of the hole size of the mesh liner. Mitzutani discloses in paragraph [0070] the desire for a nonwoven material having a high air gap ratio, and thus a high porosity. It would therefore be obvious to one of ordinary skill in the art at

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the time of invention to make the hole size of the mesh liner in a range of 147-5810 microns, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

With respect to claims 14-17, and 25, Mitzutani discloses all aspects of the claimed invention with the exception of the tensile strength of the mesh liner. Mitzutani discloses in paragraph [0074] a breaking strength for the mesh liner, and thus shows a desire for an adequate strength for the mesh liner. It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the tensile strength of the mesh liner in a range of at least 5 lbs of force per 4 inches of liner, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

With respect to claims 27, 32, 34, and 35, Mizutani discloses all aspects of the claimed invention with the exception of a waist opening, leg openings, and containment flaps. Mizutani shows in the figures an embodiment wherein the absorbent article is a sanitary napkin, but discloses in paragraph [0004] that the absorbent article may be a diaper. Diapers are well-known to provide a waist opening and leg openings to allow the diaper to fit a wearer, and containment flaps to prevent leaks. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the absorbent article of Mizutani with a waist opening, leg openings, and containment flaps so it may function as a diaper. It is noted that the mesh liner of Mizutani is a nonwoven

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material fulfilling the claimed physical limitations, and is therefore permeable to small particles such as sand.

With respect to claims 28, 29, 30, 36, 37, and 38, the liner is a mesh comprising a spunbond or meltblown web, as disclosed in paragraph [0070].

With respect to claims 31 and 39, the mesh liner is attached to the composite around its perimeter, and is unattached in a central region of the composite, as shown in figure 2.

With respect to claims 33 and 40, the article of Mizutani is fully capable of being worn while swimming, and therefore functions as a swimpant.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*CMA*

cla

September 15, 2006

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

